

BOARD OF ENVIRONMENTAL REVIEW AGENDA ITEM

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.B.2.

Agenda Item Summary: In its decision on the Roundup Power project's air quality permit appeal, the Board gave direction to the Department to develop a top-down BACT rule. The proposed rule would incorporate by reference a top-down five-step process for BACT analysis as set forth in the *Montana Top-Down Best Available Control Technology (BACT) Analysis Process and Procedures Manual - 2004 Edition (MT BACT Manual)*. This process has been adapted from the *New Source Review Workshop Manual - Draft October 1990 (NSR Manual)* for use in Montana.

List of Affected Rules: ARM 17.8.748 and 17.8.767.

Affected Parties Summary: A top-down BACT rule could affect all applicants for Montana air quality permits or applicants for major source permits, except that portion of an application subject to nonattainment New Source Review.

Scope of Proposed Proceeding: The Board is proposing to initiate rulemaking and conduct a public hearing to consider the proposed amendments to ARM 17.8.748 and 17.8.767.

Background: At its meeting on June 23, 2003, the Board adopted the Findings of Fact, Conclusions of Law, and Order in the Roundup Power project's air quality permit appeal. On page 18, lines 25 through 27, the decision states: "The Department should propose the initiation of rulemaking to adopt the top-down five-step method." A briefing paper on top-down BACT was presented to the Board at its September 26, 2003 meeting, and the Board directed the Department to proceed with the preparation of a rule to present to the Board in January 2004.

The top-down process provides that all available control technologies be ranked in descending order of control effectiveness. The most stringent technology is established as BACT unless the applicant demonstrates, and the Department agrees, that technical considerations, or energy, environmental, or economic impacts justify a conclusion that the most stringent technology is not "achievable" in that case. If the most stringent technology is eliminated in this fashion, then the next most stringent alternative is considered, and so on.

The proposed rule would require certain applicants for Montana Air Quality Permits to submit a detailed top-down BACT analysis for each permitting action resulting in a net emissions increase at the source. The analysis procedures are detailed in the *MT BACT Manual*. This draft manual has been adapted from the U.S. Environmental Protection Agency (EPA) *NSR Manual*. The five key steps in the top-down BACT process are: *Step 1*: identification of available control technologies or techniques; *Step 2*: elimination of technologically infeasible options; *Step 3*: ranking of the remaining control technologies; *Step 4*: evaluation and documentation of the evaluation of control technologies; and *Step 5*: selection of the control technology that constitutes BACT.

As requested by the Board, the Department provided three options for source categories to be considered for rule applicability in the proposed rule. The categories include:

1. Any applicant undergoing any Montana air quality permitting action resulting in increased emissions, except those increased emissions subject to nonattainment area New Source Review. The source categories include:
 - a. Minor sources as defined in ARM Title 17, chapter 8, subchapter 7;
 - b. Major sources as defined in ARM Title 17, chapter 8, subchapter 12; and
 - c. Major sources as defined in ARM Title 17, chapter 8, subchapter 8;
2. Any major source applicant, as defined under ARM Title 17, chapter 8, subchapter 12, undergoing any Montana air quality permit action resulting in increased emissions, except those increased emissions subject to nonattainment area New Source Review; and
3. Only major source applicants undergoing a major permit action as defined in ARM Title 17, chapter 8, subchapter 8.

The Department has also provided two options for consideration by the Board regarding the analysis of inherently lower polluting processes/practices to redefine the source. These options, which refer to Section III.A.3 of the MT BACT Manual, are described in the attached Notice.

Hearing Information: The Board is proposing to appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Direct the Department to prepare an alternate proposal;
3. Modify the Notice and initiate rulemaking; or
4. Determine that amendment of the rules is not appropriate and decide not to initiate rulemaking.

DEQ Recommendation: None.

ENCLOSURE: The following information is attached to this summary:

1. Draft Notice of Public Hearing on Proposed Amendment;
2. *MT BACT Manual*.